COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 552 of 2001
(Old No. 585/1996)

Himachal Road Transport Corporation **…** **Appellant/Opposite Party.**

Versus

Smt. Santosh Devi and others. **…** **Respondents**

Date: October 13, 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the Himachal Road Transport Corporation under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 25-05-1996, passed by the Motor Accident Claims Tribunal/ Ist Additional District Judge, Haridwar in Motor Accident Claim Petition Case No.16 of 1991, Smt. Santosh Devi Vs. Himachal Road Transport Corporation, by which the Tribunal has allowed the claim petition filed by the petitioners for a sum of Rs.1,99,000/- alongwith interest at the rate of 10% per annum against the Opposite party/appellant.

2- Brief facts giving rise to this appeal that on 17.08.1990 the deceased Rishipal was coming from Bahadrabad Block towards Jwalapur accompanied by his friend Rajesh. At about 8:15 P.M. a Himachal Roadways Transport Corporation Bus bearing No. HP.38-2410, came in a rash and negligent manner and hit the said scooter. In that accident, Rishipal received sustained injuries

and died on the spot. The deceased was serving in Pariyojna Administrative Officer as a Cashier and was earning Rs.1473/- per month as salary. It was alleged that the deceased was about –34- years old. **(The age of the deceased was around –34- years as the date of birth as per office records {where the deceased was working} has been shown as 24.04.1956).**

3. The Opposite Party Himachal Road Transport Corporation contested the claim petition before the Tribunal by filing its written statement. The Tribunal, on the pleadings of the parties, framed following issues and after recording evidence allowed the claim petition accordingly. Feeling aggrieved, the H.R.T.C. has come up in this appeal.

A. Whether the accident occurred by the offending Bus No.HP38-2410 on 17.08.1990 at about 8:15 P.M.?

B. Whether Rishipal died due to the rash and negligent driving of driver of offending Bus?

C. Whether the claimants are entitled to get compensation and what amount?

D. Whether the petition is bad for non-joinder of necessary parties?

E. To what relief claimants are entitled?

4. We have heard Shri B.D. Kandpal, learned counsel for the appellant and Shri H.N. Sharma learned counsel for Respondents. The learned counsel for appellant contended that the compensation awarded by the Tribunal is highly excessive and liable to be set aside and has also contended that the Tribunal has illegally deducted

Rs.100/- towards personal expenditure of the deceased and considered the personal expenses as wholly illegal and erroneous. We have gone through the record and perused the impugned judgment. The Tribunal while deciding issue No.1 and 2 on the basis of evidence on record held that the accident was occurred due to rash and negligent driving of the driver of offending bus No.HP38-2410. The learned Tribunal decided Issue No.1 and 2 on the basis of evidence Shri Raghubir Singh P.W.1 who was on duty as helper on bus of Himachal Road Transport Corporation. He has admitted that Bus belongs to his department. The bus in question reached Haridwar from Pathankot to Haridwar in morning of 17.08.1990 in the morning at about 3:00 A.M. and again moved for Pathankot at 9:00 P.M. and the bus was being driven by the driver Madan Lal. It is not disputed that the only way to go to Pathankot from Haridwar is only from Bahadrabad. P.W.4 Shri Rajesh S/o Raghubir Singh was a Pylon rider on Scooter of deceased. He saw the number of the bus. The father of Shri Rajesh lodge the First Information Report and post-mortem was conducted. From Post-Mortem Report paper No.44C2/3, the Tribunal held that deceased died due to the accidental injuries.

The Tribunal rightly held that Rishipal died due to the rash and negligent driving of the driver Madan Singh of offending Bus. The accident has been proved by P.W.4 Shri Rajesh, injured.

It has further been alleged that the accident had occurred on 17.08.1990 at 8:15 P.M. and the said bus was moved for Pathankot at 9:00 P.M. The Tribunal had taken a judicial notice of

time and given a finding that there may be a variation of time but it is not disputed that the bus was moved from Haridwar to Pathankot.

Further, the Tribunal on the basis of evidence on record, rightly held the age of the deceased as –34- years. The income of the deceased was Rs.1500/- per month as has been shown in the exhibit Ka-1 and Ka-2. P.W.2 Smt. Santosh Devi has stated that salary of her husband was Rs.1500/- per month and Rs.200/- was the deduction towards insurance and Provident Fund he expends. The Tribunal assumed the income of the deceased Rs.1200/- per month and calculated loss of annual dependency Rs.14,400/- per year. The age of the deceased was –34- years and the learned Tribunal has awarded Rs.1,92,000/- to the claimants. In addition to this amount, the Tribunal has also awarded Rs.2,000/- towards general damages and Rs.5,000/- towards consortium. As such, the total amount as has been awarded by the Tribunal is Rs.1,99,000/-. The grounds raised by the Appellant is that as per Schedule of 163-A, the Tribunal has not applied the multiplier in this present case and awarded a lump-sum amount under Section-166 of Motor Vehicle Act. We are of the view that the compensation awarded is just and proper and not exorbitant.

5. There is no evidence to the contrary on the record to hold otherwise so as to warrant any interference with the findings arrived at by the Tribunal, therefore judgment and award under appeal are liable to be confirmed.

6. The appeal has no force on merit and is dismissed. The impugned judgment and award is upheld. No order as to costs. The

amount, if deposited in the appeal shall be remitted to Tribunal concerned within a period of three months.

(B.S. Verma, J.) (P.C. Verma, J.)

Rajeev Dang